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FIRST APPEAL NO. 1161 of 1983

Date of Decision : 19.6.1996

For Approval & Signature

THE HON'BLE MR. JUSTICE N.J.PANDYA

AND

THE HON'BLE MR. JUSTICE A.R. DAVE

1. Whether reporters of Local Papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other

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5. Whether it is to be circulated to the Civil Judge ?

Mr. V.J.Desai , learned Advocate for the Appellant

Mr. Ajay R. Mehta, learned Advocate for the Respondent.

CORAM : N.J.PANDYA & A.R.DAVE, JJ

19.6.1996

ORAL JUDGMENT : [ PER : Pandya, J ]

The original claimant of the claim petition No. 428/80 has filed the present appeal for getting the balance amount that he had claimed in his said petition. His claim was for Rs. 4 Lakhs while the learned M.A.C. Tribunal (Main) at Baroda has awarded Rs. 76700/= only.

Before the trial court, the matter was contested on all counts, but so far as the findings of the negligence, involvement of the parties concerned including Insurance Company and its contract of insurance etc. findings of the Tribunal are not challenged and the same are accepted as they are.

We have, therefore, now only to concentrate on the aspect of the quantum. It so happened, the petitioner was at the relevant time running the business in U.K. and for that he had produced material on record. To establish his monthly income, he has mainly relied upon the Profit & loss Account and balancesheet at exh.60, 61 & 62. We have gone through these financial statements and we find that they are prepared by the firm of Chartered Accountant in U.K. namely M/s F.S.Dalal & Co. They were produced in the Court through the deposition of the claimant himself.

The learned Trial Judge, while dealing with the probative value of the said documents, has expressed his opinion that except that these balancesheets are for the accounting purpose and particularly from the point of view of Indian Evidence Act, is a secondary evidence, has come to the conclusion that this material alone is not enough to substantiate the claim as to the income. It may be recalled that the business was done in U.K. The claim, therefore, appears to have been made on the basis of conversion ratio between Pound Sterling and Indian Currency Rupees. Previously, for this purpose, over and above the balancesheet, further details as to the annual income, sale transactions, expenses incurred etc. could have been produced and thereafter the net income earned by the petitioner should have been established with relevant material.

Except for the said financial statements, even bank account of the petitioner in U.K. has not been produced. His actual working method and expenditure; for example; staggering ratio between the purchase price of raw material and the amount spent on labour is also not explained. We have found that against the purchase price of about \$ 300 to 400 of raw material, ten times that sum has been spent towards wages and then said figure has also been shown in the Profit & Loss Account. On that basis, the gross profit and net profit has been worked out.

For the year 1979, the gross profit is shown to be more than \$ 12000 and it has come down to \$ 7000 for the subsequent year. The expenditure incurred in the month of June 1980 and accounting year is ending on 31st August of given Calender Year. In the subsequent year i.e. 1981, the accounts show the reduction of profit and it turns into loss of more than \$ 3000.

When all the the financial statements were gone into by us and particularly the items set out in the profit and loss

account were compared under different heads of expenses, we have found that in all the three succeeding years, there has been increase and this trend has continued even in the year 1981 substantially. The reduction in profit, therefore, is largely due to increase in expenses which may have been the result of rise in price. It is, therefore, not possible to accept the submission that the loss is the direct result of the accident.

Apart from this, the fact that except the aforesaid financial statements, no other material has been produced for establishing the claim as to earning, the learned Judge, in our opinion, had no alternative but to resort to the guess work and looking to the facts and circumstances appearing before him, including the material placed on record and more particularly, in our opinion, when he had benefit of actually seeing the petitioner before him and form an opinion and on that basis when he has taken figure of Rs. 2500/= as monthly income, we would not like to interfere with the same.

However, we are unable to understand the reasonings of the learned Judge when he takes up calculation under the head of "actual economic loss". Having worked out the said figure of monthly income of Rs. 2500/=-, when learned Judge decides to give under this head for the period of 12 months a particular amount, straightway he should have worked it out to Rs. 30,000/=-. Instead, he takes base figure of Rs. 500/= for this purpose and awards only Rs. 6000/=-, in our opinion, there is no justification whatsoever for this drastic reduction. We, therefore, agree that the learned advocate Shri Bhatt appearing for the appellant and award additional sum of Rs. 24,000/= under this head.

The amount said to have been spent for employment of Assistant is not reflected in the profit and loss account because the weekly figure of salary said to have been agreed to between the parties as \$ 125 per week would necessarily result into the payment of atleast \$ 6000 p.a. which is nowhere to be found in the financial statements and more particularly in the profit and loss account.

On all fours, therefore, so far as appeal is concerned, to the aforesaid extent, it is required to be allowed. Accordingly, appeal is partly allowed. The appellant is awarded additional sum of Rs. 24,000/= with proportionate costs and interest under the head of "actual economic loss" with interest at the rate of 12% p.a. from the date of application till realization. Amount to be deposited within 10 weeks from today in the Tribunal. The said amount shall be dealt with on pro-rata basis as per the order of the Tribunal.